

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK DID NOT ALWAYS VERIFY
CORRECTION OF DEFICIENCIES
IDENTIFIED DURING SURVEYS OF
NURSING HOMES PARTICIPATING IN
MEDICARE AND MEDICAID**

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Office of Inspector General

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The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

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INTRODUCTION

WHY WE DID THIS REVIEW

Federal regulations require skilled nursing and nursing facilities (nursing homes) that participate in Medicare and Medicaid to submit corrective action plans (correction plans) to the Centers for Medicare & Medicaid Services (CMS) or to their respective State agency for certain deficiencies identified during surveys, such as nursing homes' failure to provide necessary care and services. State agencies must verify the correction of identified deficiencies by obtaining evidence of correction or through onsite reviews. Previous Office of Inspector General (OIG) reviews found that some State agencies did not always verify that selected nursing homes had corrected identified deficiencies. This review of the State agency in New York is part of an ongoing series of reviews of States' verification of correction of deficiencies. (Appendix A lists related OIG reports on nursing home compliance issues.)

In 2014, New York had the most residents nationwide residing in nursing homes. The New York State Department of Health, Division of Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities Surveillance (State agency) conducts surveys of nursing homes.

OBJECTIVE

Our objective was to determine whether the State agency verified nursing homes' correction of deficiencies identified during surveys in calendar year (CY) 2014 in accordance with Federal requirements.

BACKGROUND

Medicare and Medicaid Coverage of Nursing Homes

The Medicare and Medicaid programs cover care in skilled nursing and nursing facilities, respectively, for eligible beneficiaries in need of nursing services, specialized rehabilitation services, medically related social services, pharmaceutical services, and dietary services. Sections 1819 and 1919 of the Social Security Act (the Act) provide that nursing homes participating in the Medicare and Medicaid programs, respectively, must meet certain specified requirements (Federal participation requirements); such as quality of care, nursing services, and infection control. These sections also establish requirements for CMS and States to survey nursing homes to determine whether they meet Federal participation requirements. For both Medicare and Medicaid, these statutory participation and survey requirements are implemented in Federal regulations at 42 CFR part 483, subpart B, and 42 CFR part 488, subpart E, respectively.

Standard and Complaint Surveys of Nursing Homes

The Secretary of Health and Human Services (the Secretary) must use the State health agency, or other appropriate State agency, to determine whether nursing homes meet Federal participation requirements (the Act § 1864(a)). Further, the State must use the same State agency to determine whether nursing homes meet the participation requirements in the State Medicaid plan (the Act § 1902(a)(33)).

Under an agreement with the Secretary, the State agency must conduct standard surveys to determine whether nursing homes are in compliance with Federal participation requirements (42 CFR § 488.305(a) and § 7200 of CMS's *State Operations Manual* (the Manual), Pub. No. 100-07). The State agency certifies compliance or noncompliance with Federal participation requirements for non-State-operated nursing facilities (42 CFR § 488.330(a)(1)(C)).¹ A certification of compliance constitutes a determination that a facility is in substantial compliance and is eligible to participate in the Medicare or Medicaid program (42 CFR § 488.330(b)(1)).

A standard survey is a periodic nursing home inspection, using procedures specified in the Manual that focuses on a sample of residents selected by the State agency to gather information about the quality of resident care furnished to Medicare or Medicaid beneficiaries in a nursing home. A standard survey must be conducted at least once every 15 months (42 CFR § 488.308(a)).

The State agency must review all nursing home complaint allegations (42 CFR § 488.308(e)(2)).² Depending on the outcome of the review, the State agency may conduct a standard survey or an abbreviated standard survey (complaint survey) to investigate noncompliance with Federal participation requirements.

Deficiencies and Deficiency Ratings

A nursing home's noncompliance with a Federal participation requirement is defined as a deficiency (42 CFR § 488.301). Examples of deficiencies include a nursing home's failure to adhere to proper infection control measures or failure to provide necessary care and services.

The State agency must report each deficiency identified during a survey on the appropriate CMS form and provide the form to the nursing home and CMS. These forms include (1) a

¹ CMS certifies the compliance or noncompliance of State-operated facilities (42 CFR § 488.330(a)(1)(B)).

² An allegation of improper care or treatment of beneficiaries at a nursing home may come from a variety of sources, including beneficiaries, family members, and health care providers.

statement describing the deficiency, (2) a citation of the specific Federal participation requirement that was not met, and (3) a deficiency rating.³

The State agency must determine the deficiency rating using severity and scope components (42 CFR § 488.404(b)). Each deficiency is given a letter rating of A through L, which corresponds to a severity and scope level (deficiency rating). (A-rated deficiencies are the least serious, and L-rated deficiencies are the most serious.) Severity is the degree of or potential for resident harm and has four levels (beginning with the most severe): (1) immediate jeopardy to resident health or safety, (2) actual harm that is not immediate jeopardy, (3) no actual harm with potential for more than minimal harm but not immediate jeopardy, and (4) no actual harm with potential for minimal harm. Scope is the number of residents affected or pervasiveness of the deficiency in the nursing home and has three levels: (1) isolated, (2) pattern, and (3) widespread. The following table shows the letter for each deficiency rating and its severity and scope levels.

Table: Severity and Scope Levels for Deficiency Ratings

SEVERITY	SCOPE		
	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	J	K	L
Actual harm that is not immediate jeopardy	G	H	I
No actual harm with potential for more than minimal harm but not immediate jeopardy	D	E	F
No actual harm with potential for minimal harm	A	B	C

Correction Plans

Nursing homes must submit for approval correction plans to the State agency or CMS for all deficiencies except A-rated deficiencies (with the severity level of no actual harm with potential for minimal harm and the scope level of isolated) (42 CFR § 488.402(d)).⁴ An acceptable correction plan must specify exactly how the nursing home corrected or plans to correct each deficiency (the Manual § 2728B).

After a nursing home submits a correction plan, the State agency or CMS must certify whether the nursing home is in substantial compliance with Federal participation requirements (the

³ Form CMS-2567, Statement of Deficiencies and Plan of Correction, is used for all deficiencies except those determined to be isolated and with the potential for minimal harm.

⁴ Nursing homes use Form CMS-2567, Statement of Deficiencies and Plan of Correction, to submit correction plans.

Manual § 7317).⁵ A nursing home is in substantial compliance when identified deficiencies have ratings that represent no greater risk than potential for minimal harm to resident health and safety (A, B, or C) (42 CFR § 488.301). The State agency must determine whether there is substantial compliance by verifying correction of the identified deficiencies through obtaining evidence of correction or conducting an onsite review (follow-up survey).⁶ The deficiency rating guides which verification method the State agency uses. For less serious deficiencies (with the ratings D, E, or F without substandard quality of care⁷), the State agency may accept the nursing home's evidence of correction in lieu of conducting a follow-up survey to determine substantial compliance. For more serious deficiencies (with the ratings G through L, or F with substandard quality of care), the State agency must conduct a follow-up survey to determine substantial compliance.^{8,9}

New York State Agency

In New York, the State agency determines whether nursing homes meet Federal participation requirements and recommends to CMS whether nursing homes should be certified for participation in the Medicare and Medicaid programs. The State agency is divided into seven districts throughout the State. Each district conducts surveys of nursing homes within their designated area. During CY 2014, the State agency was responsible for conducting surveys of 626 nursing homes.

HOW WE CONDUCTED THIS REVIEW

Our review covered 4,361 deficiencies that required a correction plan identified by the State agency during CY 2014. The ratings for these deficiencies required the State agency to verify correction by either obtaining evidence of correction (4,270 deficiencies) or conducting a follow-up survey (91 deficiencies). We selected a stratified random sample of 100 deficiencies (70 deficiencies for which the State agency was required to obtain evidence of correction and 30 deficiencies for which the State agency was required to conduct a follow-up survey) and

⁵ The State agency provides the certification information to CMS on Form CMS-1539, Medicare/Medicaid Certification and Transmittal (the Manual § 2762).

⁶ Examples of evidence of correction include, but are not limited to, invoices or receipts verifying purchases or repairs, sign-in sheets of those attending in-service training and interviews with training participants.

⁷ Substandard quality of care means one or more deficiencies related to resident behavior and facility practices, quality of life or quality of care, that constitute either immediate jeopardy to resident health or safety (level J, K, or L); a pattern of or widespread actual harm that is not immediate jeopardy (level H or I); or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm (level F) (the Manual § 7001).

⁸ The State agency is not required to verify the correction of deficiencies with the ratings B or C; however, correction plans are still required for deficiencies with those ratings.

⁹ The State agency uses Form CMS-2567B, Post-Certification Revisit Report, to report those deficiencies previously reported on Form CMS-2567 that have been corrected and the dates of the corrective actions.

reviewed State agency documentation to determine whether the State agency had verified the nursing homes' correction of the sampled deficiencies. We also interviewed State agency officials and employees, including those at the seven district offices, regarding survey operations, quality assurance, and training.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

See Appendix B for the details of our audit scope and methodology.

FINDINGS

The State agency did not always verify nursing homes' correction of deficiencies identified during surveys in CY 2014 in accordance with Federal requirements. Of the 100 sampled deficiencies, the State agency verified the nursing homes' correction of 43 deficiencies but did not have documentation supporting that it had verified the nursing homes' correction of the remaining 57 deficiencies. Specifically, the State agency did not have evidence of correction for 51 deficiencies and did not document that it had verified the correction of 6 deficiencies during follow-up surveys. The State agency certified that the nursing homes that had these 57 deficiencies were in substantial compliance with Federal participation requirements; however, the State agency's certifications did not comply with all Federal requirements related to appropriately verifying the nursing homes' correction of these deficiencies. This occurred because the State agency did not ensure that surveyors followed CMS guidance when verifying and documenting the correction of nursing home deficiencies. As a result of the State agency's noncompliance, the health and safety of a significant number of nursing home residents may have been at risk.

On the basis of our sample results, we estimated that the State agency did not verify nursing homes' correction of deficiencies for 3,129 (72 percent) of the 4,361 deficiencies identified during surveys in CY 2014.

See Appendix C for our statistical sampling methodology, and Appendix D for our sample results and estimates.

THE STATE AGENCY DID NOT HAVE ANY EVIDENCE OR DID NOT HAVE SUFFICIENT EVIDENCE THAT NURSING HOMES CORRECTED DEFICIENCIES

For 51 of the 70 sampled deficiencies for which the State agency was required to obtain evidence of correction, the State agency did not have any evidence (47 deficiencies) or did not have sufficient evidence (4 deficiencies) that the nursing home corrected the deficiency. These 51 deficiencies had the ratings *D* or *E*, or *F* not involving substandard quality of care; which required the State agency to obtain, at a minimum, evidence of correction from the nursing homes before certifying their substantial compliance with Federal participation requirements.

For example, on June 19, 2014, the State agency completed a nursing home survey and identified several deficiencies, including an *E*-rated deficiency related to quality of care.¹⁰ The surveyor noted: “Based on interviews and record reviews, it was determined that for one of five residents reviewed for unnecessary medications, the facility did not ensure that all of the residents were free of significant medication errors.” Specifically, one resident continued to receive a cardiac medication after it had been discontinued by the physician.

To address this deficiency, the nursing home listed four corrective actions in its correction plan. One of these was: “The physician reviewed the orders of the resident and discontinued the low dose [cardiac medication] order on June 20, 2014.” The nursing home also included plans to educate nursing staff on the protocol for processing physician responses to pharmacy-related recommendations in a timely and accurate manner. However, the State agency did not have documentation to show that the physician reviewed the order related to the resident. Also, the State agency did not have any information to support that the nursing home had provided the training.

THE STATE AGENCY DID NOT DOCUMENT OR MAINTAIN SUFFICIENT EVIDENCE THAT IT VERIFIED THE CORRECTION OF DEFICIENCIES DURING FOLLOW-UP SURVEYS

For 6 of the 30 sampled deficiencies for which the State agency was required to conduct a follow-up survey, the State agency did not document or maintain sufficient evidence that it verified the correction of deficiencies during follow-up surveys. These six deficiencies had the ratings *G* through *L*, which required the State agency to conduct a follow-up survey. Although the State agency conducted the required follow-up surveys, it did not document or maintain sufficient evidence that it verified the correction of deficiencies.

For example, on July 21, 2014, the State agency completed a nursing home survey and identified several deficiencies, including a *G*-rated deficiency related to quality of care. The surveyor noted: “Based on staff interviews and record review during an abbreviated survey,

¹⁰ “Quality of care” requires that each resident receive, and the facility provides, the necessary care and services to attain or maintain the highest practical physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and plan of care (42 CFR § 483.25).

the facility did not provide adequate supervision to residents to prevent accidents. This was evident for one of four residents sampled for supervision.” The facility did not provide adequate monitoring and supervision of one resident who had a history of ingesting non-edible objects; such as domino game pieces, metal screws, and a pen that had to be surgically removed. In the correction plan, the nursing home stated that the resident was placed on one-on-one monitoring to prevent any further occurrences, and that a “behavior monitoring quality assurance form” had been implemented and was to be completed by the nursing supervisor to assess any residents with similar issues.

On August 29, 2014, the State agency conducted the required follow-up survey. However, it did not document that it verified correction of the deficiency. The State agency provided a form that showed increased supervision for the affected resident; however, the form was dated October 2013 – months prior to the initial survey – and therefore not sufficient to verify the deficiency had been corrected.

CONCLUSION

We determined that the State agency did not ensure that surveyors followed CMS guidance when verifying and documenting the correction of nursing home deficiencies. For example, according to various district managers, for deficiencies rated *D*, *E*, or *F* not involving substandard quality of care, it was the district office’s routine practice not to obtain evidence of correction. Instead, the surveyors relied on the nursing homes’ correction plans as verification of the deficiency correction.

RECOMMENDATION

We recommend that the State agency ensure that surveyors follow CMS guidance for verifying and documenting the correction of nursing home deficiencies in accordance with Federal requirements.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency did not indicate concurrence or nonoccurrence with our recommendation; however, it described steps taken to implement the recommendation. In addition, the State agency agreed that it did not provide documentation to support that it had verified nursing homes’ correction of deficiencies for all of our sampled deficiencies. The State agency also indicated that it provided additional documentation to demonstrate that it had verified some of the nursing homes’ correction of deficiencies that we had preliminarily concluded were not verified and that this was not reflected in our draft report.

After reviewing the State agency’s comments, we maintain that our findings are valid. We reviewed the additional documentation provided by the State agency and revised our

preliminary findings prior to the issuance of our draft report. The State agency's comments are included in their entirety as Appendix E.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Kansas Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<u>A-07-17-03218</u>	9/06/17
<i>Missouri Properly Verified Correction of Deficiencies Identified During Surveys of Nursing Homes</i>	<u>A-07-16-03217</u>	3/17/17
<i>Arizona Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<u>A-09-16-02013</u>	10/20/16
<i>Oregon Properly Verified Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<u>A-09-16-02007</u>	3/14/16
<i>Washington State Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid</i>	<u>A-09-13-02039</u>	7/09/15
<i>Nursing Facilities' Compliance With Federal Regulations for Reporting Allegations of Abuse or Neglect</i>	<u>OEI-07-13-00010</u>	8/15/14
<i>CMS's Reliance on California's Licensing Surveys of Nursing Homes Could Not Ensure the Quality of Care Provided to Medicare and Medicaid Beneficiaries</i>	<u>A-09-12-02037</u>	6/04/14
<i>Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries</i>	<u>OEI-06-11-00370</u>	2/27/14
<i>Skilled Nursing Facilities Often Fail To Meet Care Planning and Discharge Planning Requirements</i>	<u>OEI-02-09-00201</u>	2/27/13
<i>Federal Survey Requirements Not Always Met for Three California Nursing Homes Participating in the Medicare and Medicaid Programs</i>	<u>A-09-11-02019</u>	2/27/12
<i>Unidentified and Unreported Federal Deficiencies in California's Complaint Surveys of Nursing Homes Participating in the Medicare and Medicaid Programs</i>	<u>A-09-09-00114</u>	9/21/11

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered 4,361 deficiencies that required a correction plan identified by the State agency during CY 2014.¹¹ These deficiencies had ratings that required the State agency to verify correction by either obtaining evidence of correction (4,270 deficiencies) or conducting a follow-up survey (91 deficiencies). We selected a stratified random sample of 100 deficiencies.

We did not review the overall internal control structure of the State agency or the nursing homes associated with the selected sample items. Rather, we reviewed only those internal controls related to our objective.

We performed fieldwork at CMS's regional office in New York, New York, and the State agency's seven district offices throughout New York from September 2015 through August 2016.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- met with CMS regional office staff officials responsible for the administration of the program;
- interviewed State agency officials and employees, including those at the seven district offices, regarding survey operations, quality assurance, and training;
- obtained from CMS a database containing 5,963¹² deficiencies that required a correction plan and were identified during standard and complaint surveys of New York nursing homes in CY 2014;¹³
- excluded 1,602 deficiencies that:

¹¹ According to CMS's deficiency data, the State agency identified 5,963 deficiencies that required a correction plan during CY 2014. We excluded from our review 1,602 deficiencies that (1) were not directly related to resident health services; (2) had the ratings *B* or *C*, which did not require verification of correction; or (3) were duplicates.

¹² This figure does not include *A*-rated deficiencies.

¹³ The database was obtained from CMS' Certification and Survey Provider Reporting System.

- were not directly related to resident health services,¹⁴
- had the ratings *B* or *C* (not requiring verification of correction), or
- were duplicates;
- selected a stratified random sample of 100 deficiencies from the sampling frame of 4,361 deficiencies;
- reviewed State agency documentation for each sampled deficiency to determine whether the State agency verified the nursing home’s correction of the deficiency;
- determined whether the State agency had certified that the nursing homes associated with the sampled 100 deficiencies were in substantial compliance with federal participation requirements;
- estimated the number of deficiencies in the sampling frame for which the State agency did not verify the nursing homes’ correction in accordance with Federal requirements; and
- discussed the results of our review with State agency officials.

See Appendix B for the details of our statistical sampling methodology and Appendix C for our sample results and estimates.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁴ We excluded deficiencies that were related to administration; physical environment; residents’ rights; admission, transfer, and discharge of residents; dietary services; and quality of life.

APPENDIX C: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of standard and complaint survey deficiencies requiring a correction plan (deficiencies with a rating of *D* through *L*) that were identified at New York State nursing homes during CY 2014.

SAMPLING FRAME

We obtained from CMS a Microsoft Excel spreadsheet containing 5,963 deficiencies that required a correction plan and were identified during standard and complaint surveys of New York State nursing homes in CY 2014. CMS extracted the data from the Certification and Survey Provider Enforcement Reporting system. We excluded 1,602 deficiencies that were not directly related to resident health services; had the ratings *B* or *C*, which did not require verification of correction; or that were duplicates.

After we removed these deficiencies, the sampling frame consisted of 4,361 deficiencies.

SAMPLE UNIT

The sample unit was a deficiency.

SAMPLE DESIGN

We used a stratified random sample containing two strata.

Stratum	Description	Number of Deficiencies
1	Deficiencies with ratings of <i>D</i> , <i>E</i> , or <i>F</i> without substandard quality of care	4,270
2	Deficiencies with ratings of <i>G</i> through <i>L</i> , or <i>F</i> with substandard quality of care	91
Total		4,361

SAMPLE SIZE

We selected a total of 100 sample units, consisting of 70 sample units from stratum 1 and 30 sample units from stratum 2.

SOURCE OF RANDOM NUMBERS

We generated the random numbers using the OIG Office of Audit Services (OAS) statistical software random number generator.

METHOD FOR SELECTING SAMPLE UNITS

We consecutively numbered the sample units in the sampling frame from 1 to 4,270 for stratum 1 and 1 to 91 for stratum 2. After generating the random numbers for each stratum, we selected the corresponding frame items for review.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the number and calculate the percentage of deficiencies for which the State agency did not verify the nursing homes' correction of the deficiencies in accordance with Federal requirements. We also used this software to calculate the corresponding lower and upper limits of the two-sided 90-percent confidence interval.

APPENDIX D: SAMPLE RESULTS AND ESTIMATES

SAMPLE RESULTS

Stratum	Number of Deficiencies in Frame	Sample Size	Number of Deficiency Corrections Not Verified by the State Agency
1	4,270	70	51
2	91	30	6
Total	4,361	100	57

Estimated Number of Deficiencies Not Verified by the State Agency
(Limits Calculated for a 90-Percent Confidence Interval)

	Number of Deficiency Corrections Not Verified	Percentage of Deficiency Corrections Not Verified
Point estimate	3,129	72%
Lower limit	2,756	63%
Upper limit	3,502	80%

APPENDIX E: STATE AGENCY COMMENTS



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September 7, 2017

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Ref. No: A-02-15-01024

Dear Ms. Tierney:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-15-01024 entitled, "New York Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

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**New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Report A-02-15-01024 entitled
“New York Did Not Always Verify Correction of Deficiencies
Identified During Surveys of Nursing Homes Participating in
Medicare and Medicaid”**

The following are the New York State Department of Health’s (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Report A-02-15-01024 entitled, “New York Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid.”

Recommendation

We recommend that the State agency ensure that surveyors follow CMS guidance for verifying and documenting the correction of nursing home deficiencies in accordance with Federal requirements.

Response

The Department agrees that documentation to support that it had verified nursing homes’ correction of deficiencies was not provided in all the sample cases.

In response to the findings communicated at the exit conference, the Department provided additional documentation to OIG that demonstrated the Department had verified some of the nursing homes’ correction of deficiencies that OIG had preliminarily concluded were not verified. This is not reflected in the draft report.

The Department has reexamined the State Operations Manual, and implemented process improvements to ensure that surveyors verify and document the correction of nursing home deficiencies in accordance with Federal requirements.